

Federal Communications Commission

DA 00-1968

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 99-260  
Table of Allotments, ) RM-9686  
FM Broadcast Stations. )  
(Bristol, Vermont) )

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: August 23, 2000

Released: September 1, 2000

By the Chief, Allocations Branch:

1. At the request of Blue Sky Broadcasting, LLC ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 14 FCC Rcd 11637 (1999), proposing the allotment of Channel 248A to Bristol, Vermont, as the community's first local aural service. The petitioner, as well as Bulmer Communications of Vermont, Inc. ("Bulmer"), Dynamite Radio, Inc. ("Dynamite"), James O'Neill Condon ("Condon") and Burton Barlow ("Barlow") filed comments stating their individual intention to apply for the channel, if allotted. Comments in opposition were filed by Westport Broadcasting ("WB"), to which petitioner filed reply comments.<sup>1</sup>

2. WB states that Channel 248A cannot be allotted to Bristol in compliance with the Commission's technical requirements because of a short-spacing between the channel at Bristol and its proposed allotment at Westport, New York. It states that in MM Docket No. 99-83, 14 FCC Rcd 14422 (1999), the Commission proposed the allotment of Channel 276A to Saranac Lake, NY. In response to the Notice of Proposed Rule Making, WB filed a timely counterproposal requesting the substitution of Channel 275A for Channel 273A at Westport and the modification of Station WCLX's license to specify the alternate Class A channel. In response to WB's counterproposal, Family Broadcasting, Inc., proposed in reply comments that Channel 248A instead of Channel 275A be allotted to Westport, in order to avoid a conflict with Family Broadcastings potential future plans to upgrade its Station WLKC (formerly WGLY-FM), Channel 277C3, Waterbury, Vermont.<sup>2</sup> WB filed comments consenting to the allotment of Channel 248A instead of Channel 275A, stating its preference for Channel 248A because it could be used at Station WCLX's present transmitter site. WB points out that Channel 248A was proposed for use at Westport on May 10, 1999, while the Bristol request was

<sup>1</sup> Petitioner, in its reply comments, states that it is willing to withdraw its proposal since it was unaware of WB's petition at the time it submitted its Bristol request. However, we will not dismiss this proposal in light of our disposition of WB's opposition and the numerous other interested parties who filed comments stating their intention to file for the channel, if allotted.

<sup>2</sup> No application to upgrade Station WLKC has been filed with the Commission, and, in fact, on September 27, 1999, a transfer of control of the station from Family Broadcasting, Inc. to Radio Broadcasting Services, Inc., was consummated.

not filed until June 2, 1999, too late to be considered as a counterproposal in the Docket 99-83 proceeding. Therefore, WB argues that the Bristol proposal must be dismissed in accordance with Commission policy, citing Pinewood, South Carolina, 5 FCC Rcd 7609 (1990) (conflicting proposals which are filed too late for inclusion in the on-going proceeding will be dismissed). Alternatively, it requests that the Bristol proposal be suspended until the conclusion of MM Docket 99-83.<sup>3</sup>

3. We find that the policy enunciated in Pinewood, supra, does not apply in this case. Family Broadcasting did not propose the allotment of Channel 248A at Westport to resolve mutually exclusive proposals before the Commission but rather to prevent a conflict with a future application which it might file seeking to upgrade its Waterbury, Vermont, station.<sup>4</sup> In fact, at the time that Family Broadcasting filed its comments, there was no longer a conflict between the Saranac Lake and Westport proposals because WB's counterproposal in MM Docket 99-83 included two alternate channels for allotment to Saranac Lake. While WB responded by stating that it would prefer the allotment of Channel 248A instead of Channel 275A because it could be utilized at the station's current transmitter site, a staff engineering study has found that Channel 248A could not have been then, and still cannot, be allotted to Westport in compliance with the minimum distance separation requirements set forth in Section 73.207 of the Commission's Rules. Rather, Channel 248A at Westport is short-spaced to Station WFRY-FM, Channel 248C1, Watertown, New York. Therefore, even if we were to consider the allotment of Channel 248A at Westport, WB would be required to state its intention to apply for the channel at a site other than that specified in its license and pending construction permit.

4. Accordingly, based on the above discussion, we find that the public interest would be served by allotting Channel 248A to Bristol, Vermont, as the community's first local aural service. Channel 248A can be allotted to Bristol in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction.<sup>5</sup> Canadian concurrence in the allotment, as a specially-negotiated short-spaced allotment, has been obtained since Bristol is located within 320 kilometers (200 miles) of the U.S.-Canadian border and the allotment is short-spaced to Station CHOM-FM, Channel 249C1, Montreal, Quebec.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 16, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the

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<sup>3</sup> In response to Family Broadcasting's proposal that Channel 248A be allotted to Westport, WB states that it supports Channel 248A at Westport since it can upgrade to 6 kW at its present transmitter site. However, it states that if its originally proposed channel, 275A, is allotted instead, it will apply for the channel at a new transmitter site. See, MM Docket 99-83, Reply Comments of Westport Broadcasting. See also, 15 FCC Rcd 10325 (2000).

<sup>4</sup> The Commission has consistently held that proposals not before the Commission at the time that the allotment proceeding is on-going are speculative at best and therefore not given consideration. See, Hardinsburg, Kentucky, 7 FCC Rcd 1746 (1992) (proposed power increase is speculative since licensee had not filed application).

<sup>5</sup> The coordinates for Channel 248A at Bristol are 44-08-18 NL and 73-05-00 WL.

community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Bristol, Vermont	248A

6. A filing window for Channel 248A at Bristol will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau